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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,389	11/21/2001	Stuart Ozer	14531.151	5411
47973	7590	11/03/2005	EXAMINER	
WORKMAN NYDEGGER/MICROSOFT 1000 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111			GODDARD, BRIAN D	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/991,389	Applicant(s) OZER ET AL.	
	Examiner Brian Goddard	Art Unit 2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 49-65 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-18 and 49-65 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 21 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the Amendment filed 15 August 2005.
2. Claims 1-18 and 49-65 are pending in this application. In the Amendment filed 15 August 2005, claim 1 was amended. This action is made Final.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-9, 11-18, 52-54, 58-63 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,721,827 issued to Logan et al. (hereafter Logan '827) in view of U.S. Patent Application Publication No. 2002/0128904 by Carruthers et al., filed, Jan. 23, 2001, (hereafter Carruthers '01).

Claims 1 and 11:

Regarding Claims 1 and 11 Logan '827 discloses: a method and a computer program product comprising one or more computer readable media having computer-executable instructions for implementing said method, for delivering advertisement content to a view according to an advertising plan that is executed in a system that includes at least one processor configured to display advertisements to a viewer (Logan '827: Abstract, col. 4, Ins. 14-27; col. 2, ln. 67 to col. 3, ln. 18), the method comprising the acts of:

- receiving, at a control module, for each advertisement, a schedule defining a particular period of time (Logan '827: col. 2, Ins. 22-24 – note actual proposed listening schedule) during which the advertisement should be displayed, a location for the display of the advertisement (Logan '827: col. 2, Ins. 10-15; col. 5, Ins. 20-49; col. 24, Ins. 1-4 – additionally note that a download processing, mechanism, Fig 1., Item 151, reads on a control module), an indicator of the advertisement type (Logan '827: col. 24, Ins. 20-27 – note Subject Type reads on Advertisement Type), and a weight for the advertisement (Logan '827: col. 25, Ins. 15-20; col. 25, Ins. 26-45);
- generating a data file defining, for each advertisement, the advertising type, weight, location, and schedule for display of the advertisement content for the advertisement (Logan '827: col. 5, Ins. 37-49; col. 2, Ins. 10-23; col. 24, Ins. 1-15); and
- upon retrieving the advertisement content for the advertisement, delivering the advertisement content and the data file, including data defining for each advertisement the advertising type, weight, location and schedule for display of the advertisement content (see above), to at least one receiver module configured to display the advertisement content of the advertisement in accordance with the data file in such a way as to satisfy the advertising impression goal (Logan '827: Fig. 1; col. 24, Ins. 13-15 – In Fig. 1, note item 135 (advertising), item 151 (download processing), items 125, 127, and 129 (transmit data), and item 103 (receiver)).

However, Logan '827 does not explicitly disclose:

- that the weight is used to determine a frequency to display the advertisement during the defined period of time as defined by an advertising plan;
- wherein defining the weight comprises defining an absolute weight for each committed advertisement that corresponds to a guaranteed impression frequency for displaying each said committed advertisement during the period of time, and defining a relative weight to each flexible advertisement that corresponds to a proportional allocation of remaining advertising inventory that can be used for displaying each said flexible advertisement; or
- that the display of the advertisement is such that the advertisement is displayed according to the frequency defined by the weight within the defined period of time.

Carruthers '01 discloses a means to provide for the scheduling of advertisements to online users. Specifically, Carruthers '01 discloses:

- that the weight is used to determine a frequency to display the advertisement during the defined period of time as defined by an advertising plan (Carruthers '01: para. [0034] – note the master delivery plan and the weighting mechanism);
- wherein defining the weight comprises defining an absolute weight (Carruthers '01: para. [0068] – note a position ranking reads on an absolute weight because a ranking value is an specific value) for each committed advertisement (Carruthers '01: para. [0007] – note targeted advertising reads

- on committed advertising) that corresponds to a guaranteed impression frequency for displaying each said committed advertisement during the period of time, and defining a relative weight (Carruthers '01: para. [0073] – note means to determine relative importance with respect to the weightings) to each flexible advertisement (Carruthers '01: para. [0007] – note surplus advertising reads on flexible advertising) that corresponds to a proportional allocation of remaining advertising inventory that can be used for displaying each said flexible advertisement (Carruthers '01: para. [0034] – note the master plan weights all advertisements to be displayed); or
- that the display of the advertisement is such that the advertisement is displayed according to the frequency defined by the weight within the defined period of time (Carruthers '01: para. [0034] – note the master delivery plan and the weighting mechanism and furthermore that it defines a period of time, e.g. daily).

It would have been obvious to a person having ordinary skill in the art to apply the weighting means of Carruthers '01 to the advertising server of Logan '827. The motivation to combine is suggested by Carruthers '01 which discloses: use of the Carruthers '01 weights provide the advantage of optimizing surplus (i.e. flexible) advertising, while meeting target (i.e. committed) advertising requirements (Carruthers '01: paras. [0006]-[0007]).

Claims 2, 12, 52-54, 58-60, 61-63, and 65:

Regarding Claims 2 and 12, Logan '827 and Carruthers '01 in combination disclose all the limitations of Claim 1 and 11 (supra). Additionally, Logan '827 and Carruthers '01 in combination disclose:

- (Claims 2 and 12) wherein receiving, for each advertisement, the schedule, the location, the advertising type and the weight comprises receiving from a planning module remote from the control module, for each advertisement, the schedule, the location, the advertising type and the weight (Logan '827: col. 9, ln. 51 to col. 10, ln. 5 – note the user, which reads on a planning module remote from the control module). Examiner notes that Applicant's planning module enables either an administrator or an individual (which includes a user) for providing advertisement distribution information (Specification: para. [016]).
- (Claims 52 and 58) wherein the location defines a geographically defined market where the advertisement should be displayed (Logan '827: col. 5, lns. 37-49; col. 2, lns. 10-24; col. 24, lns. 1-15; col. 24, lns. 20-27; col. 25, lns. 15-20; col. 25, lns. 26-45 – note that in general, the calculation of the weight provides for input from many attributes, and any number and type of attributes are supported as per Logan '827: col. 44, lns. 33-39, including demographic information such as a geographically defined market).
- (Claims 53 and 59) wherein schedule further defines a particular duration during which the advertisement should be displayed during the defined period of time (Logan '827: col. 5, lns. 37-49; col. 2, lns. 10-24; col. 24, lns. 1-15;

col. 24, Ins. 20-27; col. 25, Ins. 15-20; col. 25, Ins. 26-45 – note that in general, the calculation of the weight provides for input from many attributes, and any number and type of attributes are supported as per Logan '827: col. 44, Ins. 33-39, including the duration of an ad).

- (Claims 54 and 60) wherein after receiving the weight at the receiver module, readjusting the weight for the advertisement based on available advertising inventory so as to implement the plan (Carruthers '01: paras. [0008] and [0033]).
- (Claim 61) wherein the receiver module, upon identifying and selecting advertisements that are to be used for the defined period of time based at least in part on the absolute weights of committed advertisements, and upon determining that the advertising inventory is not fully utilized for the defined period of time, assigns absolute weights to the flexible advertisement, based on the remaining advertising inventory relative to each non-committed advertisement's flexible weight as a proportion of the total flexible weight of all valid non-committed advertisements, and so as to determine when and whether to display the non-committed advertisements during the defined period of time (Carruthers '01: paras. [0007], [0043], [0054], [0068], and [0073] – note that (1) the schedule/queue determines weights for all ads, (2) uses the weights to order ads, (3) the surplus (i.e. flexible) ads are placed at the end of the queue i.e. after the target (i.e. committed) ads).

- (Claim 62) wherein the weight is also used to determine an order for displaying an advertisement (Carruthers '01: para. [0034] – note the order is based on weighting).
- (Claim 63) wherein the weight for each advertisement is defined only after first defining the advertisements as flexible and committed advertisements according to the advertising plan (Carruthers '01: para. [0007] – note that because the invention is directed to optimizing surplus advertising inventory, the user must first determine which ads are targeted (i.e. committed) advertising, and which ads are surplus (i.e. flexible) advertising).
- (Claim 65) wherein the receiver module, upon receiving the data file and advertising content deletes one or more previously stored data files and advertising content (Carruthers '01: para. [0026] – note the updating reads on replacing a previously stored data file).

Claims 3 and 13:

Regarding Claim 3, Logan '827 and Carruthers '01 in combination disclose all the limitations of Claims 2 and 12 (supra). Additionally, Logan '827 and Carruthers '01 in combination disclose: wherein receiving, for each advertisement, the schedule, the location, the advertising type and the weight comprises receiving continuously, periodically, or sporadically the schedule, the advertising type, and the weight from the planning module (Logan '827: col. 5, lns. 20-36 – note that Logan '827 supports a wide variety of frequencies of downloading, which reads on support for continuous, periodic, and sporadic updates).

Claim 14:

Regarding Claim 14 Logan '827 and Carruthers '01 in combination disclose all the limitations of Claim 11 (supra). Additionally, Logan '827 and Carruthers '01 in combination disclose: wherein the computer-executed instructions further comprise:

- program code means for defining at least one attribute from at least one of:
 - o a schedule time for the advertisement;
 - o a duration of the advertisement;
 - o a time zone shift of the advertisement;
 - o an indicator of type for the advertisement schedule;
 - o a weight of the advertisement;
 - o a demographic target for the advertisement; and
 - o a display area for the advertisement (Logan '827: col. 5, Ins. 37-49; col. 2, Ins. 10-24; col. 24, Ins. 1-15; col. 24, Ins. 20-27; col. 25, Ins. 15-20; col. 25, Ins. 26-45 – note that in general, the calculation of the weight provides for input from many attributes, and any number and type of attributes are supported as per Logan '827: col. 44, Ins. 33-39); and
- program code means for storing the at least one attribute (Logan '827: col. 6, In. 65 to col. 7, In. 3; col. 7, Ins. 22-25).

Claim 4, 6-7, 9, 16, and 18:

Regarding Claims 4, 6-7, 9, 16, and 18, Logan '827 and Carruthers '01 in combination disclose all the limitations of Claims 1 and 14 (supra). Additionally, Logan '827 and Carruthers '01 in combination disclose:

- (Claim 4) the act of generating the data file comprises the acts of:
 - o defining at least one attribute from at least one of:
 - a schedule time for the advertisement;
 - a display area for the advertisement;
 - a duration of the advertisement;
 - a time zone shift for the advertisement schedule time;
 - an indicator of type of the advertisement;
 - a weight of the advertisement; and
 - a demographic target of the advertisement; (Logan '827: col. 5, Ins. 37-49; col. 2, Ins. 10-24; col. 24, Ins. 1-15; col. 24, Ins. 20-27; col. 25, Ins. 15-20; col. 25, Ins. 26-45 – note that in general, the calculation of the weight provides for input from many attributes, and any number and type of attributes are supported as per Logan '827: col. 44, Ins. 33-39) and
 - o storing the at least one attribute at the receiver module (Logan '827: col. 6, In. 65 to col. 7, In. 3; col. 7, Ins. 22-25).
- (Claims 5 and 15) wherein delivering the advertisement content and the data file comprises:

Art Unit: 2161

- identifying a time when the advertisement content is to be displayed to the viewer (Logan '827: col. 7, Ins. 22-45 – note that by virtue of placement of data in the sequence of the Program Sequence File, a time to play is specified (although the viewer may override));
 - identifying a rule stored at the control module, the rule defining when to deliver the advertisement content and the data file (Logan '827: col. 5, Ins. 24-27); and
 - based upon the time and the rule, delivering the advertisement content and the data file to the at least one receiver module (Logan '827: col. 5, Ins. 20-46).
- (Claims 6 and 16) delivering the advertisement content and the data file comprises delivering the advertisement content and the data file to the at least one receiver module (Logan '827: col. 6, ln. 65 to col. 7, ln. 3; col. 7, Ins. 22-25).
- (Claim 7) an individual scheduling the advertisement content defines the advertising impression goal used to define the advertising weight (Logan '827: col. 9, ln. 51 to col. 10, ln. 5; col. 25, Ins. 26-45 – note the ChargeLevel parameter reads on an impression goal).
- (Claims 9 and 18) further comprising receiving historical data from the at least one receiver module, the historical data defining the viewing activities of the viewer at the at least one receiver module (Logan '827: col. 5, Ins. 50-67; col. 7, Ins. 40-45; col. 5, Ins. 7-19).

Art Unit: 2161

Claims 8 and 17:

Regarding Claims 8 and 17, Logan '827 and Carruthers '01 in combination disclose all the limitations of Claims 1 and 14 (supra). Additionally, Logan '827 and Carruthers '01 in combination disclose use of an advertising type (Logan '827: col. 24, Ins. 20-27 – note Subject Type reads on Advertisement Type). However, Logan '827 does not explicitly disclose: wherein the advertising type defines whether the advertising weight is an absolute weight or a relative weight. Furthermore, Logan '827 and Carruthers '01 in combination disclose: an advertising weight is an absolute weight or a relative weight (Carruthers '01: paras. [0068] and [0073]).

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Logan '827 and Carruthers '01 in view of Applicant Admitted Prior Art (hereafter AAPA).

Claim 10:

Regarding Claim 10, Logan '827 and Carruthers '01 in combination discloses all the limitations of Claim 1 (supra). Additionally, Logan '827 and Carruthers '01 in combination disclose use of an advertising type (Logan '827: col. 24, Ins. 20-27 – note Subject Type reads on Advertisement Type). Furthermore, Logan '827 and Carruthers '01 in combination disclose the ability to display advertisements in a committed fashion and a flexible fashion (Logan '827: col. 25, Ins. 37-40 – note the distinction between advertising that is prioritized and put into the program schedule, versus advertising that is inserted as filler in order to match the ChargeLevel proportion). However, Logan '827 and Carruthers '01 in combination do not explicitly disclose: wherein the advertising

Art Unit: 2161

type defines the advertisement as either a committed advertisement or a flexible advertisement.

AAPA discloses committed advertisement and flexible advertisement
(Specification: para. [09]).

It would have been obvious to a person having ordinary skill in the art to substitute the advertising type of Logan '827 and Carruthers '01 in combination, which is set as subject type, to an indication of the committed and flexible types as set forth in AAPA. The motivation to combine is suggested by Logan '827 which discloses the advantage of being able to fully fill a program schedule with different priorities of advertising, which would be optimized with an indicator of committed vs. flexible advertising (Logan '827: col. 25, lns. 40-45).

5. Claims 49, 55, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan '827 and Carruthers '01 in view of U.S. Patent No. 5,999,912 issued to Wodarz et al. (hereafter Wodarz '912).

Claims 49 and 55:

Regarding Claims 49 and 55, Logan '827 and Carruthers '01 in combination disclose all the limitations of Claims 1 and 11 (supra). However, Logan '827 and Carruthers '01 in combination do not explicitly disclose: wherein the location defines a particular location on a screen of displayed video where the advertisement should be rendered.

Wodarz '912 discloses wherein the location defines a particular location on a screen of displayed video where the advertisement should be rendered (Wodarz '912: col. 1, Ins. 40-42; col. 4, Ins. 16-20; Figs. 1a and 1b).

It would have been obvious to a person having ordinary skill in the art to apply the ad tags of Wodarz '912 to the Logan '827 and Carruthers '01 combination. The motivation to combine is suggested by Wodarz '912 which discloses that the ad tags of Wodarz '912 automate the placement of ads on a display such as that of the advertising system of Logan '827 and Carruthers '01 combination, thus saving time and money (Wodarz '912: col. 1, Ins. 24-32). Further note that the application of Wodarz '912 is a natural optimization of an advertising server that optimizes estimates of user screen availability, such as that of Logan '827 and Carruthers '01 (Carruthers '01: paras. [0023]-[0028]).

Claim 64:

Regarding Claim 64, Logan '827 and Carruthers '01 in combination disclose all the limitations of Claim 1 (supra). Additionally, Logan '827 and Carruthers '01 in combination disclose: wherein generating the data file includes defining a duration, and a scheduled display time for which the advertisement should be displayed (Logan '827: col. 5, Ins. 37-49; col. 2, Ins. 10-24; col. 24, Ins. 1-15; col. 24, Ins. 20-27; col. 25, Ins. 15-20; col. 25, Ins. 26-45 – note that in general, the calculation of the weight provides for input from many attributes, and any number and type of attributes are supported as per Logan '827: col. 44, Ins. 33-39, including the duration of an ad; also Carruthers '01: see Claim 63 – note that the scheduling supports identifying a specified time period).

Art Unit: 2161

However, Logan '827 and Carruthers '01 in combination do not explicitly disclose: a display area.

Wodarz '912 discloses: a display area (Wodarz '912: col. 1, Ins. 40-42; col. 4, Ins. 16-20; Figs. 1a and 1b).

It would have been obvious to a person having ordinary skill in the art to apply the ad tags of Wodarz '912 to the Logan '827 and Carruthers '01 combination. The motivation to combine is on the same basis as Claim 49 (supra).

6. Claims 50 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan '827, Carruthers '01 in view of Wodarz '912, in view of U.S. Patent No. 6,813,775 as issued to Finseth et al. (hereafter Finseth '775).

Claims 50 and 56:

Examiner notes that the Logan '827, Carruthers '01, and Wodarz '912 as described and combined in Claims 49 and 55 (supra), implement HTML targets (Wodarz '912: col. 1, Ins. 35-52). However, Logan '827, Carruthers '01, and Wodarz '912 in combination does not explicitly disclose that the HTML target is an EPG.

Finseth '775 discloses an EPG that is an HTML target (Finseth '775: col. 5, Ins. 56-62).

It would have been obvious to a person having ordinary skill in the art to further combine the EPG of Finseth '775 to the Logan '827, Carruthers '01 and Wodarz '912 combination. The motivation to combine is suggested by Finseth '775 which discloses the advantage of providing conditional content such as advertisements such as those of

Art Unit: 2161

the Logan '827, Carruthers '01 and Wodarz '912 combination, via television broadcast systems (Finseth '775: col. 2, Ins. 3-11; col. 1, Ins. 51-54).

7. Claims 51 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan '827 and Carruthers '01 in view of Wodarz '912, in further view of U.S. Patent No. 6,012,984 as issued to Roseman. (hereafter Roseman '984).

Claims 50 and 56:

Examiner notes that the Logan '827, Carruthers '01, and Wodarz '912 as described and combined in Claims 49 and 55 (supra), implement HTML targets (Wodarz '912: col. 1, Ins. 35-52). However, Logan '827, Carruthers '01, and Wodarz '912 in combination does not explicitly disclose that the HTML target is a game.

Roseman '984 discloses a game that is an HTML target (Roseman '984: col. 10, Ins. 36-41; Fig. 3).

It would have been obvious to a person having ordinary skill in the art to further combine the game of Roseman '984 to the Logan '827, Carruthers '01, and Wodarz '912 combination. The motivation to combine is suggested by Roseman '984 which discloses added ability of providing advertising such as those of the Logan '827, Carruthers '01, and Wodarz '912 combination, onto a game environment (Roseman '984: col. 9, Ins. 65-67).

Response to Arguments

8. Applicants' arguments filed 15 August 2005 have been fully considered but they are not persuasive.

Referring to applicants' remarks on pages 11-13 regarding the Section 103 rejections over Logan in view of Carruthers: Applicants argued that neither Logan nor Carruthers teaches "delivering the advertisement content and the data file, including data defining for each advertisement the advertising type, relative or absolute weight, location, and schedule for display of the advertisement content."

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The question of obviousness is not based solely on what each individual reference teaches, but rather on the knowledge and understanding gained from the references and their combination as a whole as would have been obvious to one of ordinary skill in the art at the time of applicants' invention.

In the instant case, Logan teaches delivering the advertisement content and the data file, including data defining for each advertisement the advertising type, weight, location, and schedule for display of the advertisement content.¹ The difference between Logan and the claimed invention is that the "weight" included in the delivered data file is not explicitly the "relative or absolute weight" as claimed. The teachings of Carruthers are not used to show delivery of advertising content and a data file, as

Logan already teaches these elements. Carruthers does teach the claimed usage of an absolute and a relative weight, and further provides motivation for using such weights. Thus, in the combination of Logan and Carruthers, the relative and absolute weights of Carruthers are used as the "weight" in Logan's delivered data file for the reasons suggested by Carruthers as shown above. Thus, the combination as a whole does obviate the claimed invention as a whole, including each and every individual element of applicants' claims.

Referring to applicants' remarks on page 13 regarding the Section 103 rejections over Logan in view of Carruthers: Applicants further argued that the combination of Logan and Carruthers is improper because Carruthers teaches away from such a combination.

The examiner disagrees for the following reasons:

Though Carruthers teaches on-demand scheduling to reduce the communication volume over a network, this does not rise to the level of teaching away from the combination. First, the combination does not require the actual network characteristics and downloading of Carruthers (see above). Second, the examiner recognizes that a combination of references is only proper when there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is suggested by Carruthers which

¹ Contrary to applicants' assertions on page 12, the examiner has not and does not admit that Logan fails

Art Unit: 2161

discloses: use of the Carruthers weights provide the advantage of optimizing surplus (i.e. flexible) advertising, while meeting target (i.e. committed) advertising requirements (Carruthers '01: paras. [0006]-[0007]). Logan and Carruthers are both directed to targeted advertising, and are both concerned with algorithms for timing of the display of advertisements to a user. Regardless of their differences in delivery methods over the network, one of ordinary skill in the art would still have recognized the advantages of Carruthers' algorithm incorporating relative and absolute weights to define WHEN each advertisement should be presented to a user, and would have been motivated for at least the above reasons to add these weights to Logan's algorithm to define WHEN the advertisements should be presented to a user.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,141,010 to Hoyle is considered particularly pertinent to applicants' claimed invention, as it discloses batch download of advertisements along with a file defining weights for timing of display of the advertisements to the user.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

to teach "delivering the advertisement content and the data file"

Art Unit: 2161

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Goddard whose telephone number is 571-272-4020. The examiner can normally be reached on M-F, 9 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 571-272-4023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2161

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